

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, et al.,

Plaintiffs,

v.

JOSEPH R. BIDEN, President of the
United States, et al.,

Defendants.

CASE NO. 17-CV-00094-LK

ORDER GRANTING LEAVE TO
FILE AMICUS BRIEF

The Court has reviewed the Motion for Leave to File Amicus Curiae Brief submitted by Creating Law Enforcement Accountability & Responsibility, Asian Americans Advancing Justice–Asian Law Caucus, and the National Immigration Project of the National Lawyers Guild (collectively, “Prospective Amici”). Dkt. No. 555. Also before the Court are Prospective Amici’s 12-page brief and Defendants’ Opposition to the Motion for Leave to File an Amicus Curiae Brief. Dkt. Nos. 555-1, 558. For the reasons discussed below, the Court GRANTS Prospective Amici’s motion.

BACKGROUND

This lawsuit stems from former-President Trump’s Executive Order 13780, which, five years ago, suspended entry into the United States for citizens or nationals of seven predominantly Muslim countries. Dkt. No. 17 at 2. *See Trump v. Hawaii*, 138 S. Ct. 2392, 2403–2406 (2018). Although President Biden has since revoked Executive Order 13780, *see* Presidential Proclamation No. 10141, 86 Fed. Reg. 7005 (2021), this litigation persists based on policies adopted by the United States Citizenship and Immigration Service (“USCIS”) in response to the Executive Order. Namely, USCIS allegedly suspended adjudication or final action on all pending petitions, applications, or requests involving citizens or nationals of the seven listed countries. Dkt. No. 17 at 2. USCIS also implemented an “extreme vetting” policy under its Controlled Application Review and Resolution Program (“CARRP”), which Plaintiffs allege unconstitutionally discriminates against Muslim applicants. *Id.* at 2–3.

Prospective Amici seek leave to file a brief in support of Plaintiffs’ pending Opposition to Defendants’ Cross Motion for Summary Judgment. Dkt. No. 555 at 1. They purport to “advocate for the dignity and fair treatment of immigrant communities throughout the United States” and assert that their brief will “assist the Court by providing unique and important insights regarding the impact of the [CARRP] policy.” *Id.* at 2 (“Here, the combined perspective of the Amici provides a broader understanding of the adverse impacts . . . of the CARRP policy on immigrants throughout the nation.”).

Defendants advance a host of arguments against Prospective Amici’s brief. Dkt. No. 558 at 1–4. As an initial matter, they contend that the brief is untimely or at least improper because the Court’s schedule for summary judgment filings did not contemplate such briefing. *Id.* at 1–2. Defendants otherwise urge the Court to deny Prospective Amici’s motion because the proposed brief (1) “is largely a reiteration of Plaintiffs’ arguments”; (2) relies on unsworn, outside materials

1 or the experiences of individuals not included in any Class; (3) focuses on events that predate
 2 CARRP and references law enforcement agencies and practices outside USCIS' control; (4) relies
 3 on anecdotal evidence; and (5) cites to inapposite materials or relies on unreliable and unverifiable
 4 sources. *Id.* at 2–4.

5 DISCUSSION

6 The Court has broad discretion to permit or prohibit amicus participation. *Hoptowit v. Ray*,
 7 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled on other grounds by Sandin v. Conner*, 515 U.S.
 8 472 (1995). However, “[t]here are no strict prerequisites to qualify as amici,” *Hooper v. City of*
 9 *Seattle*, No. C17-0077RSM, 2017 WL 11437101, at *1 (W.D. Wash. Aug. 28, 2017), and the Court
 10 will allow an amicus brief where, as here, “the amicus has unique information that can help the
 11 court beyond the help that the lawyers for the parties are able to provide.” *Cnty. Ass’n for*
 12 *Restoration of Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999);
 13 *accord Macareno v. Thomas*, 378 F. Supp. 3d 933, 940 (W.D. Wash. 2019). Amicus briefs are
 14 “frequently welcome . . . concerning legal issues that have potential ramifications beyond the
 15 parties directly involved[.]” *N.G.V. Gaming, Ltd. v. Upstream Point Molate, L.L.C.*, 355 F. Supp.
 16 2d 1061, 1067 (N.D. Cal. 2005) (citations and internal quotation marks omitted).

17 The Court rejects Defendants’ quasi-timeliness argument. There are no local rules
 18 governing when a prospective amicus must file its brief. Nor do the Federal Rules of Civil
 19 Procedure set forth any requirements for amicus briefs filed in district courts. And even if Federal
 20 Rule of Civil Procedure 29 applied to Prospective Amici’s brief, it would be timely because it was
 21 submitted seven days after Plaintiff’s principal brief in opposition to Defendants’ cross motion for
 22 summary judgment. *See* Fed. R. App. P. 29(a)(6).

23 Most of Defendants’ remaining objections question Prospective Amici’s sources or
 24 otherwise seek to undermine the reliability of “extra-record materials.” *See* Dkt. No. 558 at 2–3.

1 These attacks unnecessarily complicate and restrict the “classic role” of amicus briefing, which is
2 to assist the Court in cases of general public interest, supplement the efforts of counsel, and draw
3 the Court’s attention to law that has evaded its consideration. *Miller-Wohl Co., Inc. v. Comm’r of*
4 *Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). Permitting an amicus brief is not synonymous
5 with accepting—at face value—every factual or legal assertion therein. *See, e.g., Artichoke Joe’s*
6 *Cal. Grand Casino v. Norton*, 353 F.3d 712, 719 n.10 (9th Cir. 2003) (the court does not address
7 issues raised only in an amicus brief absent “exceptional circumstances”). Again, Prospective
8 Amici need only offer “unique information” beyond that provided by the parties. *DeRuyter Bros.*,
9 54 F. Supp. at 975.

10 The Court finds that the proposed brief meets this requirement. Prospective Amici’s brief
11 addresses the potential ramifications of this case beyond the parties directly involved, including
12 various impacts of CARRP on Muslim communities from the perspective of organizations that
13 advocate for immigrant communities throughout the United States. *See generally* Dkt. 555-1. *See*
14 *also El Papel LLC v. Inslee*, No. C20-01323-RAJ-JRC, 2020 WL 6219353, at *1 (W.D. Wash.
15 Oct. 22, 2020) (finding that proposed amicus brief was “helpful” with respect to assessing
16 “potential public safety and health ramifications beyond the parties directly involved” in the case).
17 The Court finds that Proposed Amici’s brief is helpful, that it is not duplicative of Plaintiffs’ brief,
18 and that the legal issues have potential ramifications beyond the scope of this litigation.

19 CONCLUSION

20 The Court GRANTS Prospective Amici’s Motion for Leave to File Amicus Curie Brief.
21 Dkt. No. 555. The amicus brief attached as Exhibit 1 to the Motion for Leave is hereby deemed
22 filed.

1 Dated this 15th day of February, 2022.

2 

3 Lauren King
4 United States District Judge